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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

NATIONAL ABORTION FEDERATION  
(NAF),

Plaintiff,

v.

THE CENTER FOR MEDICAL PROGRESS,  
BIOMAX PROCUREMENT SERVICES LLC,  
DAVID DALEIDEN (aka "ROBERT  
SARKIS"), and TROY NEWMAN,

Defendants.

Case No. 3:15-cv-3522-WHO

Judge: Hon. William H. Orrick

**NATIONAL ABORTION  
FEDERATION'S MOTION FOR  
AN ORDER TO SHOW CAUSE  
WHY DEFENDANTS THE  
CENTER FOR MEDICAL  
PROGRESS AND DAVID  
DALEIDEN SHOULD NOT BE  
HELD IN CIVIL CONTEMPT**

Hearing Date: April 15, 2024  
Time: 2:30 p.m.

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**NOTICE OF MOTION AND MOTION**

**TO DEFENDANTS THE CENTER FOR MEDICAL PROGRESS AND DAVID  
DALEIDEN AND THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that on April 15, 2024 at 2:30 p.m. in Courtroom 2 of the Honorable William H. Orrick III at the United States District Court for the Northern District of California, 17th Floor, 450 Golden Gate Ave., San Francisco, CA 94102, Plaintiff National Abortion Federation (“NAF”) respectfully brings this Motion for an Order to Show Cause Why Defendants The Center for Medical Progress (“CMP”) and David Daleiden (“Mr. Daleiden”) Should Not Be Held in Civil Contempt for failing to comply with this Court’s Permanent Injunction of May 4, 2021 (ECF No. 723).

**INTRODUCTION**

Over the past two weeks, Defendants CMP and Mr. Daleiden (collectively, “Defendants”) have repeatedly and openly violated the Permanent Injunction entered by this Court. Following a hearing by a member of Congress last month where edited clips were shown that Mr. Daleiden claimed were obtained from the 2014 and/or 2015 NAF Annual Meetings, Defendants then took it upon themselves to instigate their own personal public relations blitz. Specifically, Defendants published the edited footage on the CMP website in a press release on March 21, 2024, and then over the next two weeks repeatedly re-published that footage over seventy times, typically with short descriptions previewing the footage, to their Twitter/X accounts, the CMP YouTube channel, the CMP Facebook page, the CMP Instagram account, and the CMP TikTok account, all while *acknowledging* that such content was subject to a federal injunction. Even more egregious, Defendants published the names of five NAF members who purportedly were featured in the edited footage in their press release (names that Mr. Daleiden did not disclose at the hearing), further jeopardizing the safety and wellbeing of those individuals and others.

As NAF made clear in its April 3, 2024 letter alerting the Court to Defendants’ violations, NAF is not challenging Congress’s investigatory authority or Defendants’ ability to respond to lawful inquiries from Congress. However, under the plain language of the Permanent Injunction, what Defendants may not do is take it upon themselves to publish enjoined footage and

1 confidential information across the Internet simply because clips were shown at a congressional  
2 hearing. That is exactly what Defendants did here.

3 The history of violence, both real and threatened, against NAF's members associated with  
4 the release of this footage over the past nearly ten years is undisputed and well-documented by  
5 the fulsome record in this case. That risk of violence is exactly what necessitated the injunction  
6 in the first place. Defendants' incessant recent violations of the Permanent Injunction and refusal  
7 to comply with this Court's orders is inexcusable and risks inciting the same harms that the  
8 Permanent Injunction was intended to protect against.

9 NAF respectfully urges the Court to hold Defendants in civil contempt.

### 10 BACKGROUND

11 On May 4, 2021, this Court issued a Permanent Injunction, which "permanently restrain[s]  
12 and enjoin[s]" "[a]ll Defendants and their officers, agents, servants, employees, owners, and  
13 representatives, and all other persons, firms, or corporations acting in concert or participation  
14 with them" from "1) Publishing or otherwise disclosing to any third party any video, audio,  
15 photographic, or other recordings taken, or any confidential information learned at the 2014 and  
16 2015 NAF Annual Meetings; [and] 2) Retaining possession of any materials covered by this  
17 permanent injunction. Any and all such materials covered by this permanent injunction must be  
18 turned over to counsel of record in this matter or counsel of record in *People v. Daleiden*, No.  
19 2502505 (S.F. Super. Ct.), the identity of whom shall be disclosed to this Court. Access to any  
20 and all such materials by individuals covered by this permanent injunction shall occur only onsite  
21 at the offices of said counsel and subject to the supervision of said counsel, absent further order of  
22 this Court or the court in *People v. Daleiden*, No. 2502505 (S.F. Super. Ct.)." (ECF No. 723.)

23 On March 19, 2024, a member of Congress held a hearing featuring Mr. Daleiden and  
24 others. (ECF No. 828 at 1.) Edited clips from footage illegally obtained by Defendants and their  
25 associates during the 2014 and/or 2015 NAF Annual Meetings were played at the hearing. (*Id.*)  
26 At the hearing, the clips were edited to obscure, in most cases, the faces of those depicted in the  
27 footage. (*See* ECF No. 828 at 1; ECF No. 836.) During the hearing, Mr. Daleiden provided  
28 additional information that he claimed to have learned at the 2014 and 2015 NAF Annual

1 Meetings and identified the speakers depicted in the videos. (ECF No. 828 at 1.) Mr. Daleiden  
 2 did not, however, identify the speakers in those clips by name, but rather by their affiliated  
 3 organization and/or title and geographic location. (*Id.*)

4 On March 21, 2024, two days after the hearing, Defendants began to publish the edited  
 5 clips and other information illegally obtained from NAF's 2014 and/or 2015 Annual Meetings on  
 6 the Internet. (*Id.* at 1-2; Blythe Decl. ¶¶ 1-3.) This included a March 21, 2024 press release that  
 7 embedded five edited video clips that purport to be from the 2014 and/or 2015 NAF Annual  
 8 Meetings and identified, by *name* and affiliation, at least five abortion providers and/or NAF  
 9 members. (ECF No. 828 at 2; Blythe Decl. ¶ 1; Blythe Decl. Ex. A.) NAF understands that these  
 10 names were not disclosed at the March 19, 2024 hearing. (ECF No. 828 at 2.)<sup>1</sup>

11 Over the ensuing days, Defendants continued to repeatedly publish edited clips of the  
 12 enjoined footage to Mr. Daleiden's personal Twitter/X profile, CMP's Twitter/X profile, CMP's  
 13 YouTube channel, CMP's Instagram page, CMP's TikTok account, CMP's website, and  
 14 potentially elsewhere. (*Id.*; Blythe Decl. ¶¶ 1-3; Blythe Decl. Ex. B.) Starting on March 28,  
 15 2024, Defendants began publishing a longer compilation of the edited clips to the various  
 16 platforms, expressly describing the clips as content that this Court "censored" in its injunction.  
 17 (ECF No. 828 at 2; Blythe Decl. Ex. B at 44, 48, 51.) Defendants often included short  
 18 descriptions of the edited clips, sometimes with direct quotations of what the speaker purportedly  
 19 said in the clip. (*See, e.g.*, Blythe Decl. Ex. B at 12, 21, 22, 26, 28, 30-31, 33-34, 36-38, 42-43,  
 20 45, 47-49, 52, 54-56.)<sup>2</sup>

21 On April 3, 2024, counsel for NAF sent an email to Defendants' counsel demanding that  
 22 the names of NAF members be removed from the press release posted to the CMP website and  
 23 \_\_\_\_\_

24 <sup>1</sup> At least one third-party publication republished the press release posted to the CMP website  
 almost verbatim. *See* \_\_\_\_\_

25 \_\_\_\_\_ r. Daleiden apparently also  
 26 disclosed the names of providers in connection with conversations with third parties, in addition  
 to the press release. *See, e.g.*, \_\_\_\_\_

27 <sup>2</sup> Given the voluminous number of posts and re-posts, NAF is still working to understand the full  
 28 scope of Defendants' recent violations of the Permanent Injunction. The examples provided in  
 NAF's April 3, 2024 Letter and Exhibit B to the \_\_\_\_\_ Declaration are a non-exhaustive list.

1 the enjoined clips be taken down immediately, and requesting confirmation that Defendants are in  
 2 compliance with paragraph 2 of the Permanent Injunction. (Blythe Decl. ¶ 5; Blythe Decl. Ex.  
 3 C.) NAF also filed a letter notifying the Court of Defendants’ gross violations of the Permanent  
 4 Injunction. (ECF No. 828.) Following the hearing held later that day, the Court issued an order  
 5 directing Defendants “to undertake all efforts and remove or block non-parties’ access to  
 6 recordings or other information covered by the Permanent Injunction from all websites, YouTube  
 7 channels, X (formerly known as Twitter) and other social media sites or channels that they have  
 8 control over or posting access to by 8:00 p.m. April 3, 2024.” (ECF No. 831 at 1.) The order  
 9 further specified that “[t]his includes removing recordings and identifying information from  
 10 websites, disabling any links to the recordings, and requesting that third parties take appropriate  
 11 action to prevent public access to the recordings.” (*Id.*) Defendants did not comply. (*See* ECF  
 12 No. 833.)

13 On April 4, 2024, Defendants filed a “motion for clarification,” asserting that Defendants’  
 14 failure to comply with the April 3, 2024 order was based on the fact that “[a]fter a careful review  
 15 of Defendants’ YouTube channels and other social media platform, counsel for Defendants do not  
 16 believe that any of the videos displayed there are covered by this Court’s Permanent Injunction.”  
 17 (ECF No. 832 at 1.) Later that day, this Court issued second order, stating: “Even if the  
 18 recordings or materials that defendants are now publishing or otherwise sharing were produced to  
 19 Congress in 2015, and even if some quantity of the recordings or materials were published by  
 20 Congress or have otherwise been publicly disclosed, **those are Covered Materials under the**  
 21 **Permanent Injunction and defendants must remove them from websites and social media**  
 22 **channels over which they have control or posting access for.”** (ECF No. 836 at 1 (emphasis in  
 23 original).) Counsel for Defendants has since represented that Defendants are “in full compliance  
 24 with the Minute Order, as clarified by the Court.” (ECF No. 837 at 3.)

25 Based on NAF’s review, Defendants have taken down the press release from CMP’s  
 26 website. The edited clips have not been removed from CMP’s website; rather, the clips remain  
 27 posted but are denoted as “private.” (Blythe Decl. Ex. D.) It also appears, based on the public  
 28 posts that NAF’s counsel reviewed, that Defendants have disabled the links to the edited clips

1 from their social media posts, but have not deleted or removed short descriptions of what the  
2 edited clips purportedly show. (*See, e.g.*, Blythe Decl. Ex. E.)

3 The monetary impact to NAF as a result of Defendants’ violations of the Permanent  
4 Injunction is ongoing and consists primarily of (1) efforts to ensure member security, particularly  
5 as to the individuals identified in Defendants’ press release and (2) outside attorney fees  
6 expended by NAF’s pro bono counsel, Morrison Foerster LLP, to respond to Defendants’  
7 violations and seek appropriate relief. As of the date of this filing, NAF has spent over \$3,170.00  
8 in staff time responding to the violation. (Fowler Decl. ¶ 4.) As of the end of the day on April 3,  
9 2024, attorney fees incurred on behalf of NAF as a result of the violations amount to over  
10 \$70,000. (Blythe Decl. ¶ 12.) NAF expects to incur additional, similar costs prior to the  
11 contempt hearing on April 15, 2024.

## 12 ARGUMENT

13 A court may hold a party in civil contempt if the complaining party shows by clear and  
14 convincing evidence that the contemnor “violated a specific and definite order of the court.” *FTC*  
15 *v. Affordable Media, LLC*, 179 F.3d 1228, 1239 (9th Cir. 1999). Civil contempt consists of a  
16 “party’s disobedience to a specific and definite court order by failure to take all reasonable steps  
17 within the party’s power to comply.” *Inst. of Cetacean Rsch. v. Sea Shepherd Conservation*  
18 *Soc’y*, 774 F.3d 935, 945 (9th Cir. 2014) (cleaned up).

19 The complaining party is not required to show that the contemnor’s violation of the court  
20 order was “willful.” *In re Crystal Palace Gambling Hall, Inc.*, 817 F.2d 1361, 1365 (9th Cir.  
21 1987) (*citing Perry v. O’Donnell*, 759 F.2d 702, 704-706 (9th Cir. 1985)). Neither advice of  
22 counsel nor “exceptional circumstances” constitute a defense to civil contempt. *Sea Shepherd*,  
23 774 F.3d at 955; *In re Crystal Palace Gambling Hall, Inc.*, 817 F.2d at 1365. Further, “civil  
24 contempt may be appropriate if there is no objectively reasonable basis for concluding that the  
25 [party’s] conduct might be lawful.” *Taggart v. Lorenzen*, 139 S. Ct. 1795, 1801 (2019). To avoid  
26 contempt, Defendants must establish “categorically and in detail” that compliance with the  
27  
28



1 Court's order was or is impossible. *Affordable Media, LLC*, 179 F.3d at 1241.

2 **I. CIVIL CONTEMPT IS WARRANTED BECAUSE DEFENDANTS REPEATEDLY**  
 3 **PUBLISHED ENJOINED FOOTAGE AND INFORMATION IN VIOLATION OF**  
 4 **THE PERMANENT INJUNCTION.**

5 As set forth above, Defendants purposefully and knowingly violated the Permanent  
 6 Injunction's prohibition on "[p]ublishing or otherwise disclosing to any third party any video,  
 7 audio, photographic, or other recordings taken, or any confidential information learned at the  
 8 2014 and 2015 NAF Annual Meetings." (ECF No. 723 at 1.) They did so by repeatedly  
 9 publishing edited clips of enjoined footage on Defendants' own Twitter/X, YouTube, Facebook,  
 10 Instagram, and TikTok accounts, and on CMP's website, over a two-week span. (ECF No. 828.)  
 11 Based on NAF's review, Defendants posted enjoined information over *seventy times* since March  
 12 21, 2024.<sup>3</sup> By Defendants' representation, these edited clips were derived from footage obtained  
 13 at the 2014 and/or 2015 NAF Annual Meetings. (*Id.*; ECF No. 831.) In addition to posting the  
 14 edited clips themselves, Defendants routinely summarized or quoted from the edited clips in  
 15 public postings to their social media accounts, which also is "information" obtained from NAF's  
 16 meetings and thus is enjoined. Similarly, Defendants published the names of the NAF members  
 17 purportedly depicted in the edited clips, which is confidential information Defendants learned at  
 18 the 2014 and/or 2015 NAF annual meetings.

19 There is no honest dispute that all of this content and information is covered by the plain  
 20 language of the Permanent Injunction and that Defendants were the ones to publish it. (ECF No.  
 21 831.) In fact, Defendants went so far as to cite this Court's "federal injunction" as the reason that  
 22 they have not previously published the edited clips<sup>4</sup> and "add[ed] their own editorial context" to  
 23 certain clips, describing them as "censored" by this Court. (ECF No. 832 at 4.)

24 Defendants blatantly "violated a specific and definite order of the court," by which they  
 25 were clearly and indisputably bound. *See Affordable Media, LLC*, 179 F.3d at 1239. This

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26 <sup>3</sup> As mentioned above, this may not even capture the full scope of Defendants' violation.

27 <sup>4</sup> Except, of course, for *other* occasions when Defendants published the same or similar content in  
 28 violation of a Court order, such as when Defendants released edited footage in May 2017,  
 resulting in civil contempt sanctions. (ECF No. 482.)

1 conduct is inexcusable. Defendants should be held in contempt.

2 **II. THE FACT THAT THE EDITED CLIPS WERE PLAYED AT A PUBLIC**  
3 **HEARING DOES NOT REMOVE THAT CONTENT FROM THE SCOPE OF**  
4 **THE PERMANENT INJUNCTION.**

5 Based on the April 3, 2024 hearing and Defendants' subsequent motion seeking  
6 clarification, Defendants assert that "[a]ll of the videos recently posted and discussed in general  
7 or specifically at the hearing before this Court yesterday, are or derive directly from public  
8 testimony in Congress on March 19, 2024, and as such, none of them are covered by the Court's  
9 injunction, in the view of Defendants and their counsel." (ECF No. 832 at 3.) That view, simply  
10 put, is wrong.

11 First, as an initial matter, Defendants released confidential information in the last two  
12 weeks—*e.g.*, the names of NAF members purportedly depicted in the edited clips—that was not  
13 disclosed at the March 19, 2024 hearing. So Defendants' rationale for why their conduct does not  
14 violate the Permanent Injunction does not even extend to all of the content they published over  
15 the past two weeks.

16 Second, as to the edited clips and any other information Defendants discussed at the  
17 hearing, the plain language of the Permanent Injunction squarely covers that information, too.  
18 The Permanent Injunction prohibits Defendants from "[p]ublishing or otherwise disclosing to any  
19 third party any video, audio, photographic, or other recordings taken, or any confidential  
20 information learned at the 2014 and 2015 NAF Annual Meetings." (ECF No. 723.) As the Court  
21 recognized in its April 4, 2024 order, "[e]ven if the recordings or materials that defendants are  
22 now publishing or otherwise sharing were produced to Congress in 2015, and even if some  
23 quantity of the recordings or materials were published by Congress or have otherwise been  
24 publicly disclosed, those are Covered Materials under the Permanent Injunction." (ECF No. 836  
25 at 1.)

26 That a member of Congress held a public hearing does not change the language or scope  
27 of the Permanent Injunction. Nor does it give Defendants license to violate a court order to  
28 advance their own cause. If Defendants actually had a good faith argument that the Court should  
carve out specific content from the scope of the Permanent Injunction as a result of the hearing,

1 they would have sought such relief from the Court. Doing so would have given NAF an  
 2 opportunity to respond, particularly as to the real safety risks to its members associated with  
 3 Defendants' recent posting blitz. Make no mistake, based on the documented history of violence  
 4 and threatened violence that has resulted from Defendants' past publications, NAF would have  
 5 opposed any such modification. At best, what Defendants did instead was to take it upon  
 6 themselves, once again, to decide whether their actions violate the Court's orders, no matter the  
 7 costs. (*See* ECF No. 836 at 2.) At worst, as Defendants' own statements strongly suggest, they  
 8 knew *full well* that their posts violated the Permanent Injunction. And yet they acted anyway.  
 9 Either way, Defendants' conduct is unacceptable and supports the imposition of sanctions for  
 10 civil contempt.

### 11 **III. THE NATURE AND SCOPE OF DEFENDANTS' VIOLATION WARRANTS** 12 **SANCTIONS FOR CIVIL CONTEMPT.**

13 The Court has broad power to sanction Defendants for their flagrant, willful violation of  
 14 the Permanent Injunction. Judicial sanctions in civil contempt proceedings may be employed  
 15 either "to coerce the defendant into compliance with the court's order" or "to compensate the  
 16 complainant for losses sustained." *United States v. United Mine Workers of Am.*, 330 U.S. 258,  
 17 303-04 (1947). The broad range of sanctions available to the Court includes "fine[s],  
 18 imprisonment, receivership, and a broader category of creative, nontraditional sanctions." *Jones*  
 19 *v. All Am. Auto Prot., Inc.*, No. 3:14-cv-00199-LRH-WGC, 2016 U.S. Dist. LEXIS 69409, \*2  
 20 (C.D. Cal. May 24, 2016).

21 Compensatory sanctions routinely include attorney's fees and costs incurred by the  
 22 complaining party in litigating the contemnors' contempt, as well as resources expended or  
 23 wasted as a result of the contumacious conduct. *See Sea Shepherd*, 774 F.3d at 959-60 (allowing  
 24 recovery of attorney's fees and costs expended in contempt proceedings as well as resources  
 25 wasted because of contumacious conduct); *Crystal Palace*, 817 F.2d at 1363 (allowing recovery  
 26 of funds expended because of contumacious conduct).

27 The Court may also impose sanctions designed to ensure present as well as future  
 28 compliance. *See CBS Broad. Inc. v. FilmOn.com, Inc.*, 814 F.3d 91, 103 (2d Cir. 2016) ("The

1 district court's 'civil contempt powers are particularly adapted to curb recidivist offenders' where  
2 future noncompliance is a well-founded concern."). When a court imposes such a sanction, it  
3 must consider "the character and magnitude of the harm threatened by continued contumacy, and  
4 the probable effectiveness of any suggested sanction in bringing about the result desired." *United*  
5 *Mine Workers of Am.*, 330 U.S. at 304; *Whittaker Corp. v. Execuair Corp.*, 953 F.2d 510, 516  
6 (9th Cir. 1992). In that regard, the Court can and should consider Defendants' past violations of  
7 the Court's orders, including in particular their conduct in 2017 when Defendants and their  
8 criminal counsel released footage in violation of this Court's orders. (ECF No. 482.)

9 The character and magnitude of the violations evidenced here justify, at a minimum,  
10 sanctions as follows:

11 *First*, NAF appreciates that the Court has ordered Defendants to remove all enjoined  
12 information pending its ruling at the contempt hearing, no matter when such material was posted.  
13 (ECF Nos. 831, 836.) NAF has continued concerns that Defendants have not done so, including  
14 because the edited clips appear to still be posted to YouTube, albeit as "private" links, and  
15 because Defendants have not removed social media posts that describe or quote from the edited  
16 clips. NAF accordingly asks the Court to order Defendants to confirm under oath that they have  
17 taken down any material or information covered by the Order or any post that links to and/or  
18 discusses the material covered by the Order, in whatever form, including whether it is marked as  
19 "private," "unlisted," or otherwise.

20 *Second*, NAF also appreciates that the Court already has ordered Defendants to provide  
21 information, under oath, that will help determine whether Defendants are in compliance with  
22 Paragraph 2 of the Permanent Injunction, which prohibits them from "[r]etaining possession of  
23 any materials covered by this permanent injunction." (ECF No. 723 at 3.) Based on Defendants'  
24 own recent statements and conduct, NAF has serious concerns that Defendants are not in  
25 compliance. Depending on the information Defendants provide in response, NAF accordingly  
26 reserves the right to request a specific remedy to ensure compliance with Paragraph 2, as  
27 appropriate.

28 *Third*, Defendants, jointly and severally, should be required to compensate NAF for the

harm flowing from this violation, including for resources expended or wasted as a result. NAF's direct losses to date total at least \$3,170.00, which reflects diverted staff time as a result of Defendants' repeated posts. (Fowler Decl. ¶ 4.) Because that work is ongoing, NAF asks the Court for the opportunity to submit additional evidence concerning its ongoing losses as NAF continues to deal with Defendants' violation between now and the contempt hearing.

*Fourth*, Defendants, jointly and severally, should be required to pay reasonable attorneys' fees incurred by Morrison Foerster LLP on behalf of NAF in responding to the violation, attempting to ameliorate its impact, and for this contempt proceeding, which to date total over \$70,000.00 (an amount that does not include time spent on contempt briefing or the hearing). (Blythe Decl. ¶ 12.) Any fee award will be used to fund additional pro bono work, including on behalf of NAF. (*Id.* ¶ 15.) Should the Court enter contempt sanctions to compensate NAF for its harms, NAF respectfully requests the opportunity to submit additional evidence concerning its ongoing costs and attorney fees up through the contempt hearing.

*Last*, the Court should issue any other relief or impose any further sanction that it deems necessary to ensure compliance with its orders going forward.

### CONCLUSION

Defendants' repeated publication of enjoined footage and information on at least six different platforms and public disclosure of the names of five NAF members constitutes a clear and willful failure to abide by this Court's Permanent Injunction. Defendants conduct is inexcusable and, for the reasons stated above, NAF respectfully requests that this Court hold Defendants in contempt.

Dated: April 5, 2024

MORRISON & FOERSTER LLP

By: /s/ Caitlin Sinclair Blythe  
Caitlin Sinclair Blythe

Attorneys for Plaintiff  
NATIONAL ABORTION FEDERATION